



14 JAN 2009

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

ANTHONY J. ZELANO
MILLEN, WHITE, ZELANO & BRANIGAN
ARLINGTON COURTHOUSE PLAZA 1
2200 CLARENDON BOULEVARD, SUITE 1400
ARLINGTON, VA 22201

In re Application of: ONICHTCHOUK
U.S. Application No.: 10/564,769
PCT Application No.: PCT/EP2004/007917

Int. Filing Date: 15 July 2004

Priority Date: 16 July 2003

Atty Docket No.: WEICKM-53

For: USE OF PLEITROPHIN FOR PREVENTING
AND TREATING PANCREATIC DISEASES AND/OR
OBESITY AND/OR METABOLIC SYNDROME

DECISION

This is in response to "Request for Withdrawal of Improper Holding of Abandonment" filed on 04 August 2008. This response is treated as a petition under 37 CFR 1.182.

BACKGROUND

On 15 July 2004, applicant filed international application number PCT/EP2004/007917, which claimed priority to an earlier European patent application filed 16 July 2003. The thirty month national stage deadline expired on 17 January 2006.

On 17 January 2006, applicant filed national stage papers in the United States Designated Office (DO/EO/US). The submission included, inter alia, the requisite basic national fee.

On 11 April 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed requiring the submission of an executed oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) and the surcharge under 37 CFR 1.492(h).

On 24 June 2008, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed indicating that the application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 11 April 2006.

On 04 August 2008, applicant filed the present request.

DISCUSSION

Petitioner requests withdrawal of the holding of abandonment because a response allegedly was filed on 12 June 2006. Petitioner states in part that "being filed is a response to the notification to file missing requirements, a declaration and power of attorney, an assignment, a recordation cover sheet for the assignment, and sequence listing with disk". Petitioner has submitted a copy of the firm's official PTO filing record notebook for the date of 12 June 2006 with an entry "NTFMR; Decl & POA; Assign; Ck#37127 \$40.00; Record Cover Sheet; seq. listing w/disk ck#37126 \$65.00." as evidence of the date of submission. Petitioner also has submitted copies of checks cashed by the PTO for payment of the \$65.00 surcharge fee and \$40.00 recordation fee payments and a copy of the PTO Notice of Recordation of Assignment of 15 June 2006.

A review of Office records reveals that the response filed 12 June 2006 has been received but was directed to U.S. application no. 10/564,796. See "US Serial No." identification on the first page of "Response to Notification of Missing Requirements Under 35 USC 371". Accordingly, the instant request has been treated as a petition under 37 CFR 1.182 to have the 12 June 2006 response treated as being filed in the instant application. Accordingly, a petition fee of \$400.00 is charged to the Deposit Account No. 13-3402.

Notwithstanding applicant's error in identifying the US application no., the response filed 12 June 2006 does identify, inter alia, the international application no. and applicant.

Accordingly, the response will be treated on petition as being directed to the instant application.

CONCLUSION

Applicant's petition under 37 CFR 1.182 is **GRANTED** for the reasons set forth above.

The application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for processing the response filed 12 June 2006 to the Notification of Missing Requirements in accordance with this decision.

/Katherine Moran/
PCT Special Programs, Detailee
Office of PCT Legal Administration
Telephone: (571) 272-6095



Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration